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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	CASE NO. CR 15-579 VC
)	
Plaintiff,)	
)	
v.)	JOINT STATUS STATEMENT
)	
EUTIMIO REYNA CERON, et al,)	
)	
Defendants.)	Date: Nov. 18, 2016
)	Time: 11:00 a.m.
)	Court: Hon. Vince Chhabria

The government and Defendants file this Joint Status Statement to advise the Court of the status of the case describing the discovery production to date and review, as well as the government's proposed plan to group the defendants for trial and the parties' positions. ¹

I. BACKGROUND

On December 19, 2015 the grand jury returned a fourteen count indictment against eighteen defendants charging several violations of 21 U.S.C. §§ 846 and 841, alleging that they participated in a conspiracy to distribute heroin and methamphetamine, and that various defendants distributed or possessed heroin and/or methamphetamine with the intent to distribute it. The indictment charges conduct that allegedly occurred between April 17, 2014 and December 10, 2015. On July 19, 2016, the grand jury returned a thirty-three count superseding indictment. This indictment added two defendants and additional counts of conspiracy to launder drug proceeds and an international money laundering allegation. Both indictments contain a drug forfeiture allegation.

The two-year investigation that gave rise to the charges in this case involved federal and state law enforcement agencies, at least eight confidential informants, dozens of controlled purchases of

¹ John Jordan will specially appear on behalf of Mark Goldrosen for defendant Jose Ricardo Chavez-Reyna.

heroin and methamphetamine, location monitoring of telephones and vehicles, pen registers, toll record analysis, physical surveillance, video surveillance, interviews, financial investigation, the use of pole cameras, and wiretaps of seven phones between May and December 2015. Those wiretaps resulted in approximately 9,000 audio recordings, most of which were in Spanish.

II. DISCOVERY STATUS

A. Government's Statement

The government has produced a substantial amount of evidence in this case. As of November 3, 2016, however, the government has substantially completed its production. From the government's perspective, there remain three electronic devices which the government has been unable to access through ordinary forensic methods. The government plans to conduct further testing that may require the destruction of the physical devices in order to access the information stored within them. The government has notified the defense of its intent to conduct this testing and has given the defendants until November 16, 2016 to request a physical examination before the phones are physically altered.

In order to facilitate the defendants' review of the evidence, the government has provided – with each production – an excel spreadsheet contains the following fields: Bates Beginning, Bates End, Document Date, Source (i.e. where the item came from), Item Title, Description, Item Type, Confidential/Non-Confidential, Date Produced, Password, Notes. The index thus is searchable and, because it is a live document, serves as a platform for the defendants to add their own fields.

The government has also provided a separate index of the financial records produced in this case. That index, which is also in the form of an excel spreadsheet, contains a detailed description of the financial records the government produced. It too is searchable and can serve as a platform for the defendants to add their own fields. The government learned of the defense's concerns about the bates-numbering of the financial records through the process of preparing this joint status statement. The government provided the documents in their current form in part because the production includes searchable live documents. The government will confer with the defense in order to resolve the defense's concerns about how the documents are produced.

For purposes of this statement, the following dates are relevant:

- December 22, 2015: The government produced a majority of the investigative reports

describing the investigation, including controlled purchases and surveillance and the execution of search warrants, as well as the line sheet summaries of the Title III intercepts. The line sheet summaries were in English and were searchable.

- On January 12, 2016, the government produced the Title III intercepts for all target telephones, toll records for all of those telephones (and four other phones) and lab reports for many of the drug seizures.
- On March 2, 2016, the government produced the wiretap applications for the Title III wiretaps in this case, as well as the GPS tracker data for the vehicles tracked during this investigation and the documents and photographs related to Count Two – the charge of distribution resulting in death. The government also produced additional reports of investigation related to the searches and seizures on December 10, 2015, the date the agents arrested most of the defendants in this case.
- On April 8, 2016, the government produced GPS data for several of the cell phones the agents tracked during the investigation. The government produced the rest of the GPS data on June 1, 2016.
- On August 29, 2016, about one month after the grand jury added money laundering charges to the indictment, the government produced the financial records underlying those charges. The government also produced the majority of the English-language translations of the intercepted communications. The government produced the remaining transcripts on September 21, 2016.
- The government also produced the majority of the cell phone downloads on September 21, 2016, and produced the remaining downloads on November 3, 2016.

B. Defense Statement

The government has produced approximately 28 disks and two external hard drives containing multiple terabytes of Rule 16 discovery. This discovery includes tens of thousands of pages of traditional documents such as search warrants and documents seized pursuant thereto, bank records, employment records, California Department of Motor Vehicle records and other records pertaining to the purchase and sale of automobiles; Title III wiretap applications and 15-day reports; DEA-6

1 investigative reports; DEA-7 reports containing the results of forensic examination of physical evidence;
2 and thousands of pages of wiretap line sheets.

3 The discovery also includes multiple terabytes of GPS data (location coordinates); pen register
4 data; pole camera surveillance, traditional undercover video and audio files of undercover calls and
5 meetings and jail calls. In mid-September 2016, the government advised that they would produce mirror
6 images of and extracts from numerous cell phone and other electronic devices seized from various
7 defendants in December of 2015. The data contained in this production was so voluminous that it had to
8 be placed on a multi-terabyte external hard drive.

9 On August 29, 2016, the government produced approximately 18,000 pages of Spanish/English
10 transcripts which contained translations of most of the 9000 intercepted telephone conversations. The
11 transcript for each of these 9000 conversations was produced as a single, non-searchable pdf. file. In
12 order to be able to locate transcripts for particular conversations the defense had to transmit the pdf. files
13 to an out of state data processing company for inclusion in an interactive spread sheet which had
14 previously been prepared, but only contained the mainly Spanish audio recordings and the English line-
15 sheets. An additional 675 pages of wiretap transcripts were produced shortly after September 21, 2016
16 and have been sent to the data processing company for inclusion in the spread sheet. Thus, the defense
17 expects to have a complete set of intercepted telephone conversations which link the audio files and the
18 Spanish/English transcripts shortly.

19 On October 24, 2016 the government produced an additional 15 day wiretap status reports and
20 other investigative reports and documents.

21 Since the production of the Title III wiretap recordings, the defense have been attempting to
22 locate intercepted calls which are pertinent to their client, including those calls which are referred to in
23 the Title III applications for review in contemplation of filing motions to suppress the wiretap intercepts.
24 Though the government provided line sheets and audio files regarding approximately 9000 intercepted
25 calls and eventually produced Spanish/English transcripts for intercepted conversations, locating the
26 calls pertinent to each defendant and having the ability to review those with the defendants is an arduous
27 process best facilitated by the government production of a list of pertinent calls as to each defendant.
28 That list was provided by the government just on November 8, 2016 to certain defendants reflecting

1 what appears to be calls on just one of the intercepted lines and on November 14, 2016, the government
2 provided a spread sheet to the entire defense which lists 2583 calls in which the defendants were
3 intercepted. It is not yet clear if this list is the complete list of pertinent intercepted calls for all
4 defendants. Defendants who were target/subjects of the wiretaps, such as Eutemio and Marcelino Reyna
5 Ceron, are only listed if the defendant was intercepted during the monitoring of someone else's line.
6 Additionally, the spread sheet does not capture calls in which two persons discussed another person.
7 Finally, the spread sheet does not reference the Bates numbered transcripts which contain the
8 Spanish/English translations of the calls.

9 The defense can now, however, begin in earnest, a more expedited review process of the wiretap
10 calls, translations and related wiretap evidence with the defendants.

11 **1. Bank Records**

12 At the July 21, 2016 status conference the government promised to produce financial records
13 requested by Marcelino Reyna Ceron and Elizabeth Reyna Rodriguez. On August 29, 2016, the
14 government produced thousands of pages of records from numerous bank accounts, money transfer
15 services, the California Department of Motor Vehicles, and other business entities involved in the
16 purchase and sale of used automobiles at auto auctions. Unfortunately, these documents are not
17 individually Bates numbered, or otherwise formatted in a manner which would allow counsel and/or
18 forensic experts to summarize and analyze the documents in a meaningful fashion.

19 The financial records are contained in a CD and were accompanied by an index which
20 purportedly describes the records by Bates numbers. However, each Bates number actually contains one
21 or more folders containing voluminous single pdf. files, tif. files, videos and spread sheets. The bank
22 records are indexed as Bates numbers 5065-5090.

23 A non-exhaustive summary of the bank records reveal the following. Bates No. 5065 contains
24 13 tif files, 5 pdf files and 2 zip files. These files contain more than 700 pages of bank records,
25 including 300 tif. files (one page per file) involving bank records for several different accounts, which
26 are not individually Bates numbered. An additional problem with Bates 5065, and other Bates numbers
27 containing bank records, is that there are more than 300 tif. files that appear to be a bates number, but
28 are not. For example, one of the zip files contains tif. files numerically numbered "0010001" through

1 “0010268.” To complicate matters even further, there are other tif files located in another subdirectory
2 of 5065 that have the exact same numerical name, but are different and unrelated to those in the other
3 zip file.

4 Bates No. 5077 contains five (5) pdf files and three (3) subfolders. Each subfolder contains a pdf
5 file. These files contain approximately 908 pages of financial records pertaining different accounts and
6 different account holders. None of the 908 pages are bates numbered. Bates 5080 contains 45 pdf files,
7 two txt files and one dat file. The files contain approximately 830 pages of bank records pertaining to
8 more than six different bank accounts. None of the pages are bates numbered.

9 Bates 5079 contains 14 individual pdf files and one txt file. The files contain approximately 350
10 pages of bank records pertaining to six different bank accounts. None of the pages are bates numbered.

11 Bates 5082 contains ten pdf files, one txt file, one data file, and a subfolder entitled “Follow up
12 docs”. The subfolder “Follow up docs” contains 19 additional pdf files and one txt file. Bates 5082
13 contains 294 pages of bank records for numerous bank accounts, none of which are Bates stamped.

14 In summary, four of the sixteen Bates numbered files in the government’s index relating to bank
15 records contain 54 separate files representing 2,252 pages of documents which are not Bates numbered.

16 **2. California Dept. of Motor Vehicle Records**

17 Bates Nos. 5094 through 5100 contains 28 separate pdf. files containing 967 pages of California
18 Department of Motor Vehicle records, none of which are bates numbered.

19 **3. Records Re Purchase and Sale of Automobiles**

20 Bates Nos. 5104, 5107, 5108, 5110 and 5111 contain 233 separate pdf. files containing 1027
21 pages of records, 4 spread sheets and 15 jpegs, none of which are bates numbered.

22 **III. MOTIONS**

23 **A. Defense Statement**

24 **1. Motions Regarding Electronic Surveillance**

25 Electronic surveillance presents a new frontier of investigation, and courts have struggled to
26 apply the Fourth Amendment to the digital realm. *See, e.g., United States v. Jones*, 132 S. Ct. 945
27 (2012); *Riley v. California*, 134 S. Ct. 2473 (2014). Beyond the standard challenges to “traditional”
28 Title III wiretap interceptions, the discovery produced in this case compels defense counsel to

1 investigate and analyze the collection and use of data the government acquired through geolocation
2 tracking and cell-site simulators. Because this evidence is highly technical and procedurally complex,
3 counsel for the defendants in this case agree that effective representation of our clients in this case
4 mandates the assistance of a research attorney with specialized, cutting-edge knowledge about electronic
5 surveillance, and the government's use of it in criminal prosecutions.²

6 Prior to the preparation of the wiretap motions, it is necessary that the defense issue subpoenas
7 duces tecum to cellular service providers for data and correspondence (which requires considerable time
8 to pinpoint account numbers, IMEI numbers, date ranges, etc.); responding to motions to quash from the
9 cellular network providers which are routinely filed in response to said subpoenas; discovery motions,
10 e.g. informant identities and impeachment material; "Hemisphere" project documentation, law
11 enforcement database materials, correspondence with cell phone service providers and database record
12 keepers (i.e. NCRIC, EPIC); and data delivery records (i.e. from cell networks to government law
13 enforcement agents)

14 Additionally, defense counsel together with the assistance of the research attorney will have to
15 review cell, GPS, and other tracking data; informant impeachment materials and law enforcement
16 reports regarding informant activities, and compare the data to search warrant and Title III affidavits;
17 and draft motions to suppress CSLI/Hemisphere/CALEA/GPS Data/Search Warrants. Upon completion
18 of this motion litigation, motions to suppress Title III intercepts will be required, which is the last step,
19 after the motions to suppress underlying data are adjudicated.

20 Defense counsel have consulted with each other and are in agreement that we will file joint
21 motions regarding electronic data and wiretap evidence to the extent that the underlying issues are the
22 same for each defendant.

23 **2. Other Motions**

24 Defendants also anticipate filing motions to suppress evidence seized via traditional search
25 warrants, and a motion to disclose confidential informants along with the motions regarding electronic
26

27 ² The defense has jointly agreed to retain a highly qualified individual with vast experience in
28 this area to act as a research attorney. The costs associated with the retention of this attorney will be
equally shared between CJA and retained counsel.

surveillance. There will also be motions to sever based on the government's proposed trial groupings and other grounds. Their proposed trial groupings were just provided to the defense on November 14, 2016 and defendants reserve their right to object to the proposed groupings and to file motions to sever.³

3. Motion Filing Schedule

To more expeditiously proceed in the pretrial motion phase of this complex case and to ensure the effective representation of the defendants, the defense believes that the motion filing schedule should occur in rounds and that the following filing dates for wiretap related and other motions, taking into account the factors set forth in 18 U.S.C. § 3161, be scheduled as follows with corresponding dates for oppositions, replies and hearing dates:

1. Subpoena Duces Tecum Applications Directed Toward Service Providers - To be filed week of 11/28/2016. Anticipated Motions to Quash these subpoenas filed By Telephone Providers – To be heard the week of 1/16/17. If the motions are heard in mid-January, the defense would like to receive the discovery materials by early February.

2. Motion for Disclosure of confidential informants (and any discovery issues that cannot be resolved between the parties) and Motions to Sever - To be filed week of 1/16/17

3. Motion To Suppress CSLI /Hemisphere/CALEA/GPS Data and Motions To Suppress Evidence Obtained by Search Warrants (not utilizing Title III intercepts) - To be filed week of 4/10/2017.

4. Motions To Suppress Title III intercepts_- To be filed week of 6/12/2017

B. Government's Statement

The government respects the defendants' desire to pursue all available defenses, including filing motions to suppress evidence. The government proposes a shorter timeline however: the government produced the wiretap applications and supporting documents over six months ago and there are 18 defense attorneys to share the work of researching and writing the motion(s), seeking additional evidence to support the motion and litigate preliminary motions. For those reasons, the government proposes the following:

³ There may be separate filings from certain defendants relating to the proposed trial groupings prior to the Status Hearing.

1 **1. Wiretap Motion**

2 Defendants should file their motion to suppress wire evidence on February 10, 2017. The
3 government will oppose on March 17, 2017, the defense will reply on March 24, 2017 and the Court
4 will hear the motion on April 14, 2017.

5 **2. Other Motions to Suppress**

6 Defendants in Trial 2 (below) should file any other motions to suppress on the same timeline as
7 the timeline provided, above, for the wiretap motion. Defendants in Trials 3-5 should file any other
8 motions to suppress at least ten weeks in advance of the trial dates set for those trials, with the hearings
9 set for one month prior to trial.

10 **IV. PROPOSED TRIAL GROUPING AND TRIAL DATES**

11 **A. Government's Statement**

12 The government proposes the following groupings and order for the trials in this case, as well as
13 a timeline for setting the matters for trial:

14 **Trial 1**

15 Defendants: Juvenal Mondragon
16 Leny Romero Moya

17 Counts: All

18 Trial Date: February 14, 2017

19 Length: Three days

20 Reason: The government proposes trying United States v. Juvenal Mondragon, et al,
21 CR 15-134 VC first because defendants in this case are not charged in the drug
22 distribution conspiracy in the related case, United States v. Eutimio Reyna-Ceron,
23 et al, CR 15-579 VC, and thus this case can be tried without any of the wiretap
24 evidence in CR 15-579 VC. That makes the presentation of evidence in this case
25 shorter and more discreet. The government believes it is possible to try this case
26 in three full court days.

27 **Trial 2**

28 Defendants: Rodolfo Rivera Herrera
 Robert Erickson

Counts: Two

Trial Date: April 24, 2017

Length: Three weeks

Reason: Count Two involves complex but discrete issues and a limited number of defendants. The case will involve evidence that the defendants distributed heroin that the victim, Natalie M. ultimately used, and evidence (in the form of toxicology analysis and expert opinions) that the heroin the defendants distributed was the cause of her death. The government anticipates calling at least three expert witnesses, as well as 10-12 law enforcement officers (plus additional personnel if the defendants contest chain of custody) and 8-10 civilian witnesses in its case-in-chief.

Trial 3

Defendants: Cristino Vargas Mondragon
Brigido Rangel
Julio Cesar Barbosa

Counts: One, Three, Four

Trial Date: July 17, 2017

Length: 2 weeks

Reason: Count One relates to the defendants' involvement in the overall drug distribution conspiracy. Counts Three and Four relate to the defendants' arrest on August 12, 2015, during which the agents seized 18.82 kilograms of black tar heroin, 1.97 kilograms of white powder heroin, and 9.77 kilograms of 99.1% pure methamphetamine from four tires in Vargas-Mondragon's garage. The issues involved in trying these counts are not complex. The government proposes to limit the wiretap evidence it will introduce in its case in chief to just the evidence obtained through monitoring telephone numbers 707 304 1274, 707 548 0519 and 209 988 8962.

Status Conference

Date: September 14, 2017

Reason: To assess which defendants still remain for trial and, if necessary, adjust the trial groupings proposed below for the third and fourth trials.

Trial 4

Defendants: Eutimio Reyna Ceron
 Marcelino Reyna Ceron
 Cornelio Reyna Ceron
 Elizabeth Reyna Rodriguez
 Ramon Medina
 Remigio Madrigal Solorio
 Santiago Rubio Chavez
 Marcelino Reyna Rodriguez
 Eutimio Reyna Rodriguez
 Raymundo Doval Duran
 Rodolfo Rivera Herrera

Counts: One, Five through Fourteen and Sixteen through Thirty-Three

Trial Date: November 10, 2017

Length: Two months

Reason: The government appreciates the Court's instruction that the trial groupings consist of "no more than four or five defendants." The government proposes including eleven defendants in this group for the following reasons. First, nine of the defendants in this group are members of the same distribution cell and seven of those persons are members of the same family. They operated as a single unit to acquire process and distribute drugs and then launder the proceeds of those drug sales. The other two defendants – Raymundo Doval Duran and Rodolfo Rivera Herrera – ran cooperating distribution cells, and are related to the Reyna-Cerons through marriage. They shared suppliers and intelligence regarding law enforcement activities, and occasionally made joint drug purchases with the Reyna-Ceron cell. Proving the conspiracy count against any of these defendants thus requires presentation of exactly the same evidence as against any of the others. Severing any of them would require presentation of the same evidence multiple times. That evidence includes significant wiretap evidence, along with evidence obtained through physical and electronic surveillance, civilian and law enforcement witnesses, expert witnesses and financial records. Indeed, the

evidence of the drug conspiracy is intertwined with the evidence related to the money laundering counts – and vice versa – because it proves that the money flowing through the defendants’ accounts was illegal drug proceeds, and the amount of money helps establish the scope of the drug conspiracy. Second, depending on the outcome of Trial 2, it may not be necessary to make Rodolfo Rivera Herrera a party to this trial or try him on the remaining counts. Fourth, the government is engaged in settlement discussions with several of the defendants in this group. It is unlikely that all of the defendants will still be in the case by the time this group proceeds to trial.

Trial 5

Defendants: Jaime Sandoval
Valentin Camacho Toledo
Jose Ricardo Chavez-Yanez

Counts: One and Fifteen

Trial Date: April, 2018

Length: Two weeks

Reasons: These defendants were suppliers, or brokers for suppliers, to the distribution cells the defendants in Trial 4 operated. Though the government would prefer to try them along with those defendants, it is also feasible to try them separately. This trial will also involve substantial wiretap evidence.

B. Defense Statement

The defense will need time to consider the government’s trial grouping proposal in determining whether motions to sever are appropriate. As set out herein, the anticipated wiretap litigation appears to put the earliest trial date in late summer/early fall 2016. As such, Mr. Rangel will renew his motion for severance and requests the opportunity to brief the matter and/or be heard regarding this renewed motion.⁴ While the government has been dealing with the underlying evidence and data in this case for

⁴ As noted at the September 20, 2016, hearing on Mr. Rangel's first motion to sever, Darlene Comstedt, counsel for Mr. Rangel, is unavailable on November 18, 2016, and thus unable to be present at the status conference on said date. Mr. Dressler will be specially appearing on Mr. Rangel's behalf for Ms. Comstedt at said status hearing.

1 years, particularly during its investigative phase, the defense has not had that same opportunity. The
2 defense is still in the process of reviewing the voluminous discovery in this case with the defendants.
3 And, the government's proposed schedule is unrealistic based on the pretrial motion litigation still to be
4 filed all things which must occur to preserve the defendants' Sixth Amendment rights. The defense also
5 believes the government's proposal is aggressive particularly based upon our collective experience in
6 other cases involving the type of electronic surveillance used in this case and due to the amount of work
7 required to prepare the numerous pretrial motions. Their proposed schedule doesn't take into
8 consideration the time needed for service providers to provide responsive discovery (or any litigation
9 regarding the subpoenas or if the Court is required to issue orders compelling timely performance), the
10 time needed by the government to file its responses to pretrial motions or the defense need to file replies
11 or consider a motion to suppress GPS Data Search Warrants prior to the filing of a Motion to Suppress
12 Title III Interceptions because its drafting will need to take account of that ruling.

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1 As the exact motion schedule is not yet known and because it is not known whether certain
2 defendants, such as Mr. Rangel or others will be severed, the defense cannot, at this time, suggest trial
3 dates for all except for the government's suggested Trial 1.⁵ The defense objects to the trial dates
4 proposed by the government and recommends that trial dates be scheduled after severance motions are
5 heard and that trial dates be scheduled in Fall, 2017.⁶

6 DATED: November 15, 2016

Respectfully submitted,

7 BRIAN J. STRETCH
8 United States Attorney

9 /s/
10 FRANK J. RIEBLI
11 RITA F. LIN
Assistant United States Attorneys

12 /s/ Frank Riebli w/ permission
13 GAIL SHIFMAN
14 KENYETTE JONES
15 ALAN DRESSLER
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26 ⁵ In addition, defense counsel have a myriad of trial dates set in various cases/jurisdictions as
27 well as some personal commitments such as prepaid vacations set at various times. Those trial and other
obligations can be discussed at the status hearing.

28 ⁶ Defense counsel Gail Shifman objects to government's suggested status hearing date of
September 14, 2017 as she will be on a pre-paid vacation on this date.